

HOUSE BILL No. 1543

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-15; IC 13-18-3-1; IC 13-18-22.

Synopsis: Wetlands. Establishes a permit program for the filling, dredging, and excavating of certain wetlands.

Effective: Upon passage; July 1, 2003.

Weinzapfel

January 16, 2003, read first time and referred to Committee on Environmental Affairs.

C
o
p
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1543

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-29 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. "Clean Water Act",
3 for purposes of IC 13-18-13 **and IC 13-18-22**, refers to:

4 (1) 33 U.S.C. 1251 et seq.; and

5 (2) regulations adopted under 33 U.S.C. 1251 et seq.

6 SECTION 2. IC 13-11-2-23.4 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2003]: **Sec. 23.4 "Category I wetland", for**
9 **purposes of IC 13-18-22, means an isolated wetland that supports**
10 **minimal wildlife habitat, and minimal hydrological and**
11 **recreational functions.**

12 SECTION 3. IC 13-11-2-23.5 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2003]: **Sec. 23.5 "Category II wetland", for**
15 **purposes of IC 13-18-22, means an isolated wetland that supports**
16 **moderate wildlife habitat or hydrological and recreational**
17 **functions.**



C
o
p
y

SECTION 4. IC 13-11-2-23.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 23.6 "Category III wetland", for purposes of IC 13-18-22, means an isolated wetland that supports superior wildlife habitat or hydrological and recreational functions.**

SECTION 5. IC 13-11-2-112.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 112.5 "Isolated wetland", for purposes of this chapter and IC 13-18-22, means a wetland not subject to the jurisdiction of:**

- (1) the United States Environmental Protection Agency; or**
- (2) the United States Army Corps of Engineers.**

SECTION 6. IC 13-11-2-139.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 139.5 "Newly formed wetland", for purposes of IC 13-18-22, means an isolated wetland:**

- (1) in an area that was not a wetland for a period after July 1, 2003; and**
- (2) that was:**
 - (A) created by the property owner;**
 - (B) restored to improved wetland condition by the property owner;**
 - (C) allowed by the property owner to be naturally restored to improved wetland condition; or**
 - (D) created by natural or human activities outside the knowledge or control of the property owner.**

SECTION 7. IC 13-11-2-265.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 265.1. "Wetland activity", for purposes of IC 13-18-22, means the:**

- (1) filling;**
- (2) dredging; or**
- (3) excavation;**

of an isolated wetland.

SECTION 8. IC 13-11-2-265.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 265.2 "Wetlands", for purposes of IC 13-18-22, means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil**

C
o
p
y



1 **conditions. Wetlands generally include swamps, marshes, bogs, and**
 2 **similar areas.**

3 SECTION 9. IC 13-15-1-2 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. **(a)** The water
 5 pollution control board shall establish requirements for the issuance of
 6 permits to control water pollution and atomic radiation, including the
 7 following:

8 (1) Permits to control or limit the discharge of any contaminants
 9 into state waters or into a publicly owned treatment works.

10 (2) Permits for the construction, installation, or modification of
 11 facilities, equipment, or devices to control or limit any discharge,
 12 emission, or disposal of contaminants into the waters of Indiana
 13 or into a publicly owned treatment works.

14 (3) Permits for the operation of facilities, equipment, or devices
 15 to control or limit the discharge, emission, or disposal of any
 16 contaminants into the waters of Indiana or into a publicly owned
 17 treatment works.

18 However, the water pollution control board may not require a permit
 19 under subdivision (2) for any facility, equipment, or device
 20 constructed, installed, or modified as part of a surface coal mining
 21 operation that is operated under a permit issued under IC 14-34.

22 **(b) The water pollution control board shall establish:**

23 **(1) requirements for the issuance of permits for wetlands**
 24 **activity under IC 13-18-22 to:**

25 **(A) assure no net loss of isolated wetlands in Indiana; and**

26 **(B) promote a net gain in high quality functions of**
 27 **wetlands; and**

28 **(2) procedures for operation of the up-front wetlands**
 29 **mitigation program established under IC 13-18-22-8.**

30 SECTION 10. IC 13-15-3-2 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A permit issued
 32 under:

33 (1) this article (except IC 13-15-9);

34 (2) IC 13-17-11;

35 (3) IC 13-18-18; or

36 (4) IC 13-20-1;

37 may be issued for any period determined by the department to be
 38 appropriate but not to exceed five (5) years.

39 **(b) A permit issued under IC 13-18-22 for wetlands activity may**
 40 **be issued for any period determined by the department to be**
 41 **appropriate.**

42 **(c) Except as provided in federal law, a valid permit that has been**

C
o
p
y



issued under this chapter that concerns an activity of a continuing nature may be renewed for a period of not more than ten (10) years as determined by the department. The board shall adopt rules implementing this subsection.

(c) (d) The commissioner may delegate authority to issue or deny permits to a designated staff member.

SECTION 11. IC 13-18-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The ~~water pollution control~~ board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

(1) that is deleterious to:

(A) the public health; or

(B) the prosecution of any industry or lawful occupation; or

(2) by which:

(A) any fish life or any beneficial animal or vegetable life may be destroyed; or

(B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.

(b) The board shall adopt rules to establish the period in which the department must act on an application for certification under Section 401 of the Clean Water Act. Until the board adopts rules to establish the period, the department must act on an application not later than one hundred twenty (120) days after the date the application is filed with the department.

SECTION 12. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 22. Wetlands

Sec. 1. (a) Except as provided in subsections (b) and (c), a permit is required for wetland activities in an isolated wetland.

(b) A permit under subsection (a) is not required for wetland activities in the following:

(1) A manmade water body and the wetland fringe of the water body that:

(A) serve a beneficial use; and

(B) are not constructed to fulfill a wetland regulatory purpose;

including storm water retention and detention ponds, ornamental ponds, livestock watering ponds, fishing ponds, or ponds constructed for pollution control purposes.

(2) A newly formed wetland that is not used for:

(A) a compensatory mitigation purpose; or

C
o
p
y



(B) another regulatory purpose.

(3) A wetland regulated under a federal agricultural law supervised by the Natural Resource Conservation Service of the United States Department of Agriculture.

(4) A Category I wetland smaller than one-tenth (0.1) of an acre.

(5) A wetland created solely as the result of actions that were taken for a purpose other than creating the wetland.

(6) Other wetlands, as established by the board.

(c) A permit under subsection (a) is not required for agricultural activities listed under Section 404(f) of the Clean Water Act.

Sec. 2. The department shall issue an individual permit to a person for wetland activities in an isolated wetland if:

(1) the person meets the requirements of section 3 of this chapter; and

(2) the general permit requirements of section 5 of this chapter do not apply.

Sec. 3. A person qualifies for an individual permit under section 2 of this chapter if the person meets the requirements of the individual permit rule adopted under section 4 of this chapter.

Sec. 4. The board shall adopt a rule before September 1, 2004, for the administration of individual permits under this chapter that must include:

(1) an application form that includes:

(A) the wetland categorization;

(B) a wetland delineation;

(C) a project description;

(D) a description of the acreage subject to the wetland activity; and

(E) site photographs;

(2) a demonstration that wetland disturbance cannot be avoided;

(3) a demonstration that wetland disturbance is minimized;

(4) a commitment that water quality in surface waters of the state will not be degraded as the result of the wetland activity;

(5) circumstances and conditions for mitigation requirements;

(6) the time permitted for the department to make a determination on the application; and

(7) a requirement that the department publish notice under IC 5-3-1:

(A) of receipt of an application for an individual permit;

C
o
p
y



and

(B) that the department will hold a public hearing on the application in the county where the wetland is located if:

- (i) a person requests a public hearing not later than fifteen (15) days after the date of publication; and
- (ii) the department determines there is sufficient interest to hold a public hearing.

Sec. 5. A person qualifies under a general permit for wetland activity if the wetland activity proposed by the person meets the requirements of the general permit rule adopted under section 6 of this chapter.

Sec. 6. The board shall adopt a rule before September 1, 2004, for the administration of general permits under this chapter that must include:

(1) procedures for submission to the department of a notice of intent to conduct wetland activity under a general permit that includes:

(A) a demonstration that wetland disturbance cannot be avoided;

(B) a demonstration that wetland disturbance is minimized; and

(C) a proposed mitigation project;

(2) a period of not more than thirty (30) days after the submission of the notice of intent under subdivision (1) in which the department may review whether the criteria for the general permit are met; and

(3) procedures under which the department:

(A) may, after a determination under subdivision (2) that the criteria for the general permit are not met, require the person to apply for an individual permit under this chapter; and

(B) must provide to the person a written statement of its reasons for the determination under clause (A).

Sec. 7. (a) The board shall adopt a rule before September 1, 2004, to establish procedures to:

(1) designate specific real property as outstanding state wetlands; and

(2) remove real property from the designation under subdivision (1).

(b) The rule under subsection (a):

(1) may permit designation as outstanding state wetlands only real property that includes:

C
o
p
y



- (A) wetlands that are rare and ecologically important; and
- (B) a suitable buffer area surrounding the wetlands; and
- (2) must prohibit wetland activity on outstanding state wetlands unless the wetland activity:
 - (A) is temporary; or
 - (B) is designed to maintain ecologically important wetland qualities.

(c) If real property is designated under this section as outstanding state wetlands:

- (1) the real property must be designated as a permanent conservation easement under IC 32-23-5; and
- (2) the department:
 - (A) shall compensate the owner of the real property for the loss of development rights to the property; and
 - (B) if the designation under subdivision (1) results in a reduction of the property tax assessment of the real property, annually pay to the county an amount equal to the resultant reduction of property taxes due and payable on the property during the year.

Sec. 8. (a) The board shall adopt a rule before September 1, 2004, consistent with the policy of no net loss of wetlands and net gain of high quality wetland functions that:

- (1) provides for mitigation of the loss of wetlands caused by wetland activities through credit from:
 - (A) the creation or restoration of comparable or higher quality wetlands;
 - (B) creation or restoration of a new wetland at the time of wetland activity;
 - (C) purchase of credit in property under a compact with the department to restore and maintain a wetland;
 - (D) purchase of credit from a landowner of a newly restored wetland;
 - (E) specified payments to the wetland restoration fund for general permit mitigation;
- (2) establish descending preferred priority for wetland mitigation credit as follows:
 - (A) On the same property as the wetland activity.
 - (B) In the same watershed as the wetland activity.
 - (C) In the same county as the wetland activity.
 - (D) In an adjacent watershed or county.
 - (E) Elsewhere in the basin.
 - (F) Elsewhere in the state; and



C
o
p
y

(3) establish mitigation acreage ratios:

(A) of one to one (1:1) if:

(i) the quality of the wetland on which the wetland activity occurs and the quality of the replacement wetland are the same; and

(ii) the replacement wetland is successfully functioning at the time of the wetland activity; and

(B) greater or smaller than one to one (1:1) if the quality of the wetland on which the wetland activity occurs differs from the quality of the replacement wetland.

(b) The department shall:

(1) establish the wetlands restoration fund for receipt of payments for mitigation under subsection (a); and

(2) use the fund to:

(A) create;

(B) restore; or

(C) enhance;

replacement wetlands under this section.

Sec. 9. (a) The department shall create and maintain a registry of newly formed wetlands that maintains documentation that the area was not a wetland at a particular time.

(b) The department may charge:

(1) a fee of not more than one hundred dollars (\$100) for registration in the registry under subsection (a); and

(2) a fee of not more than fifty dollars (\$50) per year to maintain the registration.

(c) The department shall use the revenue from the fees under subsection (b) for the operation of the registry under subsection (a).

Sec. 10. (a) A requirement for compliance with surface water quality standards is incorporated into each permit under this chapter for the duration of the wetland activity.

(b) Noncompliance with the permit is not a violation of water quality standards unless the water quality leaving the project area is impaired.

SECTION 13. [EFFECTIVE JULY 1, 2003] (a) The definitions in IC 13-11-2, as amended by this act, apply throughout this SECTION.

(b) Before July 1, 2003, the department shall develop and present to the water pollution control board a policy or statement under IC 13-14-1-11.5 that does the following:

(1) Requires, consistent with IC 13-18-22, as added by this act,

C
o
p
y



the filing of an application with the department for an individual permit for wetland activity that occurs:

(A) after June 30, 2003; and

(B) before the effective date of the rules adopted under:

(i) IC 13-18-22-4;

(ii) IC 13-18-22-6; and

(iii) IC 13-18-22-8;

all as added by this act.

(2) With respect to an application under subdivision (1), establishes:

(A) the factors the department will consider in reviewing the application;

(B) procedures for:

(i) filing of applications;

(ii) action by the department; and

(iii) appeals of actions by the department; and

(C) the period not to exceed one hundred twenty (120) days within which the department must act.

(3) Establishes the attributes of categories of isolated wetlands to which the filing requirements of subdivision (1) apply that are consistent with the following:

(A) For a Category I wetland, characterized by:

(i) hydrologic isolation;

(ii) low species diversity;

(iii) a predominance of nonnative species, including greater than fifty percent (50%) areal cover for vegetative species;

(iv) no significant habitat or wildlife use; and

(v) limited potential to achieve beneficial wetlands functions.

(B) For a Category II wetland, characterized by:

(i) domination by native species but generally without the presence of, or the habitat for, rare, threatened, or endangered species; and

(ii) degradation, but with reasonable potential for reestablishing wetlands functions.

(C) For a Category III wetland, characterized by:

(i) high levels of diversity;

(ii) high proportion of native species; and

(iii) high functional values.

(4) Establishes, consistent with IC 13-18-22, as added by this act, criteria for general permits:

C
o
p
y



(A) comparable to those addressed by nationwide permits under Section 404 of the Clean Water Act; and

(B) for wetland activity affecting:

(i) category I wetlands; and

(ii) category II wetlands;

smaller than one-half (0.5) acre.

(5) Establishes mitigation requirements consistent with IC 13-18-22, as added by this act.

(6) Addresses any other matter the department considers necessary to administer the process described in this subsection:

(A) after June 30, 2003; and

(B) before the effective date of the rules adopted under:

(i) IC 13-18-22-4;

(ii) IC 13-18-22-6; and

(iii) IC 13-18-22-8;

all as added by this act.

(c) Before September 1, 2003, the department shall develop and present to the water pollution control board a policy or statement under IC 13-14-1-11.5 that establishes procedures for up-front mitigation use of newly formed wetlands as compensatory mitigation.

(d) The department's policies or statements under subsections (b) and (c) must, to the greatest extent possible, be consistent with IC 13-18-22, as added by this act.

(e) The department shall, before October 1, 2003, and again before September 1, 2003, report to the environmental quality service council on the progress of:

(1) the development of the policies or statements under subsections (b) and (c); and

(2) the adoption of rules under:

(A) IC 13-15-1-2; and

(B) IC 13-18-22.

(f) The following expire September 1, 2004:

(1) the department's statement or policy under subsection (b); and

(2) this SECTION.

SECTION 14. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

(1) Monitor the implementation of this act.

(2) Review the role of the department of environmental management with respect to action on requests under section

C
o
p
y



1 401 of the Clean Water Act (33 U.S.C. 1341) for certifications
 2 concerning projects subject to permit requirements under
 3 section 404 of the Clean Water Act (33 U.S.C. 1344), and
 4 recommend whether statutory direction is appropriate or
 5 necessary in defining that role.

6 (3) Complete its consideration of the options for statutory
 7 definition of "private pond" as applied in the definition of
 8 "waters" in IC 13-11-2-265, and recommend an option,
 9 including a statement of rationale.

10 (4) Evaluate the tensions between existing programs for
 11 wetlands protection and for local drainage, and recommend
 12 principles and policies for ameliorating those tensions, taking
 13 into consideration the rationale and objectives for both
 14 programs.

15 (5) Recommend a framework for overall state policy on
 16 wetlands to implement the 1996 Indiana Wetland
 17 Conservation Plan with goals, objectives, and responsibilities,
 18 including recommendations on:

19 (A) as a long term strategy, the types and functions of
 20 wetlands that are valued in particular geographic areas;
 21 and

22 (B) the means for restoring, maintaining, and protecting
 23 wetlands, including identification of agencies to be involved
 24 and the incentives to be offered.

25 (6) Recommend:

26 (A) composition;

27 (B) responsibilities;

28 (C) staffing; and

29 (D) funding;

30 of a permanent state wetlands conservation council.

31 (7) Evaluate the usefulness of a statute to create an Indiana
 32 wetland conservation commission for the purpose of
 33 coordinating state agency implementation of the state wetland
 34 policy.

35 (8) Submit its final report on the matters described in the
 36 preceding four subdivisions before November 1, 2003, to:

37 (A) the governor; and

38 (B) the executive director of the legislative services agency.

39 (b) The environmental quality service council shall:

40 (1) conduct an ongoing evaluation, during the period from
 41 July 1, 2003, to November 1, 2006, of the implementation of:

42 (A) the permit program for state regulated wetlands; and

C
O
P
Y



1 **(B) the up-front mitigation policy;**
 2 **both as established under this act;**
 3 **(2) recommend any adjustments to either program referred**
 4 **to in subdivision (1) that are considered advisable to improve**
 5 **the operation and effectiveness of the programs, consistent**
 6 **with the purpose of providing an efficient permitting process**
 7 **and enhancing the attainment of an overall goal of no net loss**
 8 **of state regulated wetlands; and**
 9 **(3) submit its final report on the matters described in this**
 10 **subsection before November 1, 2005, to:**
 11 **(A) the governor; and**
 12 **(B) the executive director of the legislative services agency.**
 13 **(c) This SECTION expires November 1, 2006.**
 14 **SECTION 15. An emergency is declared for this act.**

C
 o
 p
 y

